

**THE HON'BLE SRI JUSTICE J.CHELAMESWAR
and
THE HON'BLE SRI JUSTICE D. APPA RAO**

W.P. No.14714 of 2006

Dated: 09.10.2006

Between:-

M/s. Y.Nagaraja

..Petitioner

And

The Commercial Tax Officer,
Hindupur, Ananthapur District.

..Respondent

-
ORDER (Per JC,J) :

This writ petition is filed with a prayer as follows:

“To declare the action of the respondent in passing the impugned best judgment assessment; order in proceedings G.I.NO.8778/2004-2005, dated 12-06-2006 for the assessment year 2004-2005 under CST Act as illegal, arbitrary, highhandedness, without authority of law and contrary to the provisions of the Act.”

2. The petitioner is a proprietor concern carrying business in manufacture and sale of edible oils, oil seeds etc., and a registered dealer under both A.P.G.S.T. and C.S.T. Acts and is an assessee on the rolls of the respondent-The Commercial Tax Officer, Hundupur.

3. For the assessment year 2004-05, the tax liability of the petitioner under the C.S.T. Act was sought to be assessed by the respondent. A show cause notice dated 06-02-2006 was issued to the petitioner proposing a net turnover of Rs.1,56,32,280/-. The petitioner filed his objections on 11-02-2006 initially, and further he filed a letter dated 18-05-2006 seeking some more time to file further objections. The respondent granted ten days time to file further objections. Again the petitioner sought one month's time on various reasons which are not relevant for the present purpose.

4. In fact, further objections were filed on 12-06-2006. However, the respondent, by order dated 12-06-2006, passed an assessment order under which he arrived at a net taxable turnover

of Rs.1,56,32,280/-. While arriving at such conclusion, the respondent, in the assessment order, recorded a sudden and absurd statement as follows:-

“It is therefore, proposed the estimate, and add Rs.100000/- per each waybill under APGST Act towards G.N.Cake = 1.00.000X15 = 1.50,00,000/- and it is proposed to add Rs.3.00.000/- per each waybill under CST Act towards G.N.Oil. 5.00.000 X 11 = 55.00.000/-.”

“The net turn over is taxable as under:		
G.N.Oil covered by C form:	96.40.280/- @ 4% -	Rs.3.85.611.00
G.N.Oil covered by C form:	4.78.000/- @ 10% -	Rs. 47.800-00
G.N.Oil Turnover added for		
11 way bills:	45.00.000/- @ 10% -	Rs.4.50.000-00
G.N.Cake	14.000/- @ 10% -	Rs. 1.400.00

	1.46.32.280/-	Rs.13.15.011-00

5. Both the above extracts demonstrate a clear error which has the effect of multiplying the petitioner’s liability which we do not think is a *bona fide* mistake. But, for the purpose of present order, the above extracts are sufficient to hold that the order was passed without application of mind. That apart, the petitioner’s compliant that his objections were not considered also merits consideration.

6. Heard the learned Government Pleader for the Commercial Taxes.

7. In the circumstances, we are of the opinion that the impugned order is required to be set aside and the petitioner be given a fresh opportunity to set forth his defence to the show cause notice referred to earlier and an appropriate assessment order be passed in accordance with law, after considering the objections of the petitioner which are already filed. In the

background of the above mentioned irregularities noticed in the order, we thought it fit that the assessment of the petitioner be made over to an officer, other than the one who passed the present order. But, we were informed by the learned Government Pleader for Commercial Taxes that Officer who passed the order has already been transferred from the place. We have no manner of doubt that the present officer will consider the above aspects and pass appropriate orders.

8. The impugned order is accordingly set aside. The Writ Petition is disposed of as indicated above.

J.CHELAMESWAR,J

October 09, 2006

D.APPA RAO,J

KVR